IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4230 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AK SINHA

Versus

MANAGER, AIRPORTS AUTHORITY OF INDIA,

Appearance:

1. Special Civil Application No. 4230 of 2001

MS SANGEETA N. PAHWA for

M/S THAKKAR ASSOC. for Petitioner No. 1

MR CHETAN C PANDYA FOR MR SV RAJU for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 11/08/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the order dated 24/10/2000 passed by the respondent authority, at Annexure `A' to the petition, whereby the Competent Authority of the respondent had accepted the resignation of the petitioner with effect from 01/04/1997, pursuant to the communication dated 18/10/2000 received from the Central Head Quarters of the respondent authority.

2.0 The petitioner joined the services under the respondent authority as an Assistant Technical Officer with effect from 26/03/1979. As the petitioner was suffering from kidney ailment and other diseases, he could not attend his duties regularly. Since the petitioner was not remaining well, he thought it fit to resign from the duty. Accordingly, he forwarded his resignation letter dated 11/07/1999 to the respondent authority. The respondent authority vide letter dated 20/09/1999 asked the petitioner to forward the same through proper channel. As per the said order of the respondent authority, the petitioner forwarded the resignation letter dated 25/10/1999 through proper channel.

2.1 By order dated 14/04/2000, the respondent authority asked the petitioner to pay one month's salary in lieu of acceptance of the resignation letter of the petitioner. Since the petitioner was not having the said amount, he requested the Competent Authority by letter dated 22/05/2000, to reinstate him till his application of resignation was under process.

2.2 On 06/10/2000 the Doctor gave a fitness certificate to the petitioner to the effect that the petitioner was fit to resume his duties as his health was improving. Therefore, by letter dated 09/10/2000, the petitioner submitted an application for the withdrawal of his resignation. But, to the utter shock of the petitioner, by letter dated 24/10/2000, it was informed that the resignation of the petitioner has been accepted on 18/10/2000 with retrospective effect from 01/04/1997.

2.3 After making several representations to the respondent authority for considering his case for reinstatement, the petitioner was compelled to resign by letter dated 24/10/2000. Hence, this petition.

3.0 Ms.Sangeeta N. Pahwa learned advocate for the petitioner has contended that the order dated 24/10/2000, at Annexure `A' to the petition, is not the correct reproduction of the original order. The original order, at Annexure `III' to the petition, clearly states that the resignation of the petitioner was accepted with effect from 01/04/1997 by the Central Head Quarter vide its letter dated 18/10/2000, but, subject to the condition that no dues were outstanding against the petitioner. The above Clause is missing in the order dated 24/10/2000, at Annexure `A' to the petition. Therefore, the resignation which was accepted

unconditionally is bad in law.

3.1 Ms.Pahwa has further contended that the resignation could not have been accepted with effect from 01/04/1997, in view of the fact that the petitioner had for the first time shown his willingness to resign only on 11/07/1999. Therefore, the same is bad in law.

3.2 Ms.Pahwa has further contended that before the decision of acceptance of resignation on 18/10/2000 was taken, the petitioner had withdrawn his resignation i.e. by letter 09/10/2000. Therefore, the order dated 24/10/2000, at Annexure `A' to the petition, is bad in law and is required to be quashed and set aside.

3.3 Ms.Pahwa has also contended that in the order dated 24/10/2000, at Annexure `A' to the petition, reference has been made to the letter dated 18/10/2000. The said letter does not prove that the resignation of the petitioner was accepted on 06/10/2000. Moreover, in the order dated 18/11/2000, at Annexure `III' to the petition, it was made clear that the resignation of the petitioner would be accepted subject to the condition that no dues were outstanding against him. From the salary-slip of the petitioner, at Annexure `IV' to the petition, it is clear that scooter loan is outstanding in his name. Therefore, the contention raised by the respondent authority in their reply that the resignation was accepted on 06/10/2000 is misconceived. No evidence to that effect has also been produced on record.

4.0 The respondent authority has filed its reply. Mr.Chetan K Pandya learned advocate appearing for Mr.S V Raju for the respondent authority has contended that before the decision was taken on 06/10/2000, the file was placed before various Officers of the respondent authority and the final decision was taken on 14/09/2000. Therefore, he has submitted that the case of the petitioner that his resignation was accepted after its withdrawal is not correct.

4.1 Mr.Pandya has further contended that even under Rule 21 of the Central Civil Service (Pension) Rules, 1972, the petitioner is not entitled for salary from 01/04/1997 i.e. the date from which he was not attending office. Therefore, his resignation has been accepted from the date of his remaining on unauthorized leave. He has further contended that the communication dated 24/10/2000, at Annexure `A' to the petition, was unconditional since there were no outstanding dues from the petitioner.

4.2 Mr.Pandya for the respondent authority has relied upon a decision of the Apex Court in the case of Union of India & Ors. v. B. Dev reported in (1998) 7 S.C.C. 691, wherein it has been held that it would be open for the Authority to withhold pension on the proof of charge. In the present case, the question is with respect to the sanctioning of resignation with effect from 01/04/1997 and it may be that while giving the reasonings for the acceptance of the said resignation, the authority might have considered the said facts. But, nowhere in the order of resignation it is reflected. It is reflected for the first time in the affidavit in reply filed by the respondent authority. Therefore, the ratio laid down in the aforesaid decision will not apply to the facts of the case on hand.

4.3 Mr.Pandya has also relied upon a decision in the case of North Zone Cultural Centre and Another v. Vedpathi Dinesh Kumar reported in (2003) 5 S.C.C. 455, wherein it has been held that a resignation becomes effective only on acceptance, even if the acceptance has not been communicated. In the present case, under the Rules, the resignation becomes effective only when all the departmental dues are fully adjusted and it would be effective from the date from which the person is relieved from his duties.

4.4 Mr.Pandya has also relied upon a decision in the case of State of Rajasthan & Ors. v. Sujata Malhotra reported in (2003) 9 S.C.C. 286, wherein it has been held that the termination of an employee on the ground of his / her remaining unauthorizedly absent for a long period by holding regular departmental enquiry is justified. In the present case, the ratio laid down in the aforesaid decision will not be applicable to the case on hand as it relates to termination.

5.0 I have heard the learned advocates for the parties and have gone through the documents produced on record. The decision of the respondent authority of acceptance of resignation with effect from 01/04/1997 i.e. from the date from which the petitioner was not attending office, is in violation of law, inasmuch as on 14/04/2000 itself, the Manager, Airports Authority of India, Vadodara, had called upon the petitioner to deposit one month's salary in Cash / Demand Draft in connection with the acceptance of his resignation. It was clarified in the said order that any delay in depositing the said payment will be liable to accepting his resignation by the higher level. Subsequently, the

petitioner had showed his inability to deposit the said amount by letter dated 22/05/2000. Therefore, the decision was taken only on 18/10/2000 which is clear from the order at Annexure `III' to the petition.

5.1 Prima facie even if the decision was taken on file, the actual decision was taken only after the letter dated 09/10/2000 for withdrawal of resignation was submitted. Assuming that the decision was taken prior to the letter for withdrawal of the resignation was submitted, even then the resignation was conditional and the same is not permitted, in view of the judgment of the Apex Court in the case of Power Finance Corporation Ltd. v. Pramod Kumar Bhatia reported in (1997) 4 S.C.C. 280, wherein it has been held that the resignation will not become effective unless the employee was relieved of his duty after complying with the conditions.

5.2 In the present case, from the salary slip of the petitioner, at Annexure `IV' to the petition, it is clear that a scooter loan was outstanding in the name of the petitioner and in the letter dated 18/11/2000, at Annexure `III' to the petition, it has been made clear that the resignation would be accepted, subject to the condition that no dues were outstanding in the name of the petitioner. Therefore, the actual decision was taken only after the letter dated 09/10/2000 for withdrawal of the resignation was submitted.

5.3 On the contrary, under the Rules, the respondent authority could have initiated departmental inquiry, before receiving the intimation of acceptance of the resignation, which clearly indicates that unless the acceptance of resignation is communicated to the employee, it has no effect. Rules 5, 6, 7 & 8 of the said Rules relating to resignation from service are relevant, which read as under;

"Resignation from Service :

5. Resignation should not be accepted until all the department dues are fully adjusted.

6. The accepting authority will decide the date from which the resignation should become effective.

7. A resignation becomes effective not merely when it is accepted by the authority concerned, but only when the officer is actually relieved of his duties.

8. An official quitting his post before receiving intimation of acceptance of his resignation is liable to be proceeded against both legally and departmentally."

5.4 In above view of the matter, the order dated 18/11/2000 on conditional resignation, at Annexure `III' to the petition, is not permissible under the Law. Even on the second count of acceptance of resignation with effect from 01/04/1997 is concerned, i.e. from the date from which the petitioner was on unauthorized leave, the same is also not permissible, in view of the fact that the petitioner had shown his willingness to tender his resignation for the first time only on 11/07/1999.

5.5 Therefore, on the ground of unauthorized leave, relying on the Service Rules and more particularly on Rule 21 of the Central Civil Service (Pension) Rules, 1972, the same is also not permissible, in view of the judgment of the Apex Court in the case of Nand Keshwar Prasad v. Indian Farmers Fertilizers Cooperative Ltd. & Ors. reported in (1998) 5 S.C.C. 461, wherein it has been held that the resignation letter must take effect from the date specified therein. The following observations of the Hon'ble the Supreme Court are relevant;

"....the law is well settled by this Court in a number of decisions that unless controlled by condition of service or the statutory provisions, the retirement mentioned in the letter of resignation must take effect from the date mentioned therein and such date cannot be advanced by accepting the resignation from an earlier date when the employee concerned did not intend to retire from such earlier date. It has also been held by this Court that it is open to the employee concerned to withdraw letter of resignation before the same becomes effective."

5.6 In that view of the matter, the order of the respondent authority is required to be quashed and set aside as it is clear from the records that the petitioner had made his intention very clear on 22/05/2000 that he was not in a position to pay one month's salary as per the order dated 14/04/2000. By communication dated 23/08/2000 the petitioner had also requested the respondent authority to allow him to resume duty since the letter dated 22/05/2000 was not considered by the respondent authority. From the above two letters

addressed to the respondent authority, it is very clear that the petitioner had impliedly shown his willingness for the withdrawal of his resignation.

6.0 In the result, the petition is allowed. The order of the respondent authority dated 24/10/2000, at Annexure `A' to the petition, accepting the resignation of the petitioner is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K. S. Jhaveri, J.)

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